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Annex II

Understandings with respect to certain provisions of the draft articles

With respect to article 10

The term "immunity" in article 10 is to be understood in the context of the draft articles as a whole.

Article 10, paragraph 3, does not pre-judge the question of "piercing the corporate veil", questions relating to a situation where a State entity has deliberately misrepresented its financial position or subsequently reduced its assets to avoid satisfying a claim, or other related issues.

With respect to article 11

The Ad Hoc Committee noted that the reference in article 11 (2) (c) to the "security interests" of the employer State was intended primarily to address matters of national security and the security of diplomatic missions and consular posts.

The Ad Hoc Committee noted that under article 41 of the 1961 Vienna Convention on Diplomatic Relations and article 55 of the 1963 Vienna Convention on Consular Relations, all persons referred to in those articles have the duty to respect the laws and regulations, including the respect of labour laws, of the host country. At the same time the Ad Hoc Committee also noted that under article 38 of the 1961 Vienna Convention on Diplomatic Relations and article 71 of the 1963 Vienna Convention on Consular Relations, the receiving State has a duty to exercise its jurisdiction in such a manner as not to interfere unduly with the performance of the functions of the mission or the consular post.

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With respect to articles 13 and 14

The expression "determination" is used to refer not only to the ascertainment or verification of the existence of the rights protected, but also to the evaluation or assessment of the substance, including content, scope and extent, of such rights.

With respect to article 17

The expression "commercial transaction" includes investment matters.

With respect to article 18

The expression "entity" in paragraph (c) means the State as an independent legal personality, a constituent unit of a federal State, a subdivision of a State, agency or instrumentality of a State or other entity, which enjoys independent legal personality.

The words "property that has a connection with the entity" in paragraph (c) are to be understood as broader than ownership or possession.

Article 18 does not pre-judge the question of "piercing the corporate veil", questions relating to a situation where a State entity has deliberately misrepresented its financial position or subsequently reduced its assets to avoid satisfying a claim, or other related issues.

With respect to criminal proceedings

The Ad Hoc Committee noted the general understanding that the draft articles do not cover criminal proceedings.